

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Application of AT&T Mobility Spectrum LLC and)	WT Docket No. 15-181
Agri-Valley Communications, Inc.)	
)	
For Consent To Assign Licenses)	

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 2015

Released: December 30, 2015

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of AT&T and Agri-Valley Communications for Commission consent to the assignment to AT&T of six Lower 700 MHz C Block licenses and two Lower 700 MHz B Block licenses covering seven local market areas in Michigan. The Commission determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.¹ In the proposed transaction, AT&T would increase its low-band spectrum holdings, and in particular, would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum in six of these seven local market areas in Michigan. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum from the proposed transaction, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low. Further, we find some public interest benefits are likely to be realized, such as increased network quality and a better consumer experience. Based on the record before us and our competitive review, we find that the proposed assignment of licenses would serve the public interest, convenience, and necessity, and therefore we approve the proposed assignments.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* AT&T Inc. (together with its indirect and wholly-owned subsidiary, AT&T Mobility Spectrum LLC, “AT&T”), headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.² Agri-Valley Communications, Inc. (“Agri-Valley,” and together with AT&T, the

¹ See Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133, 6238-40 ¶¶ 282-88 (2014) (“*Mobile Spectrum Holdings Report and Order*”), *recon denied*, *Order on Reconsideration*, 30 FCC Rcd 8635 (2015).

² See AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 20, 2015), available at http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.htm.

“Applicants”) is the parent company of entities providing mobile, fixed wireless broadband Internet access, and landline services in Michigan.³

3. *Description of the Transaction.* On May 12, 2015, AT&T and Agri-Valley filed the Application pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),⁴ seeking Commission consent to assign six Lower 700 MHz C Block licenses and two Lower 700 MHz B Block licenses to AT&T.⁵ Through these licenses, AT&T would acquire 12 to 24 megahertz of Lower 700 MHz B and C Block spectrum in 37 counties covering seven Cellular Market Areas (“CMAs”) in Michigan.⁶ Post-transaction, AT&T would hold 120 to 175 megahertz of spectrum in total, including 30 to 55 megahertz of below-1-GHz spectrum in these seven CMAs.⁷ AT&T would end up having an interest in more than one-third of the below-1-GHz spectrum in six of the seven CMAs.⁸

4. *Standard of Review.* Pursuant to section 310(d) of the Act,⁹ we must determine whether the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience, and necessity.¹⁰ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹¹ other applicable statutes, and the Commission’s rules.¹² If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹³ We then employ a balancing

³ See <http://www.thumbcellular.com/about-us/>; <https://avci.net/isp/>.

⁴ 47 U.S.C. § 310(d).

⁵ See Application, Exhibit 1 – Description of Transaction and Public Interest Statement at 1 n.1 (“Public Interest Statement”). The Application was assigned ULS File No. 0006785720.

⁶ See AT&T Mobility Spectrum LLC and Agri-Valley Communications, Inc. Seek FCC Consent to the Assignment of Six Lower 700 MHz C Block Licenses and Two Lower 700 MHz B Block Licenses in Michigan, WT Docket No. 15-181, *Public Notice*, 30 FCC Rcd 8353 (WTB 2015) (“*Accepted for Filing Public Notice*”). See also Application, Exhibit 3 – Spectrum Aggregation.

⁷ See Application, Exhibit 3 – Spectrum Aggregation.

⁸ As set out in the docket, the Bureau accepted the Application for filing and established a pleading cycle, released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted the associated protective order, adopted a protective order covering the submission of confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

⁹ 47 U.S.C. § 310(d).

¹⁰ See, e.g., Application of AT&T Mobility Spectrum LLC and Consolidated Telephone Company for Consent To Assign Licenses, WT Docket No. 14-254, *Memorandum Opinion and Order*, 30 FCC Rcd 9797, 9799-9800 ¶ 6 (WTB 2015) (“*AT&T-Consolidated Order*”); Applications of AT&T Inc., E.N.M.R Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations, WT Docket No. 14-144, *Memorandum Opinion and Order*, 30 FCC Rcd 5107, 5111 ¶ 8 (2015) (“*AT&T-Plateau Wireless Order*”); Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap License Co, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-193, *Memorandum Opinion and Order*, 29 FCC Rcd 2735, 2741-42 ¶ 13 (WTB, IB 2014) (“*AT&T-Leap Order*”).

¹¹ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308 of the Act. 47 U.S.C. §§ 308, 310(d). See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-9800 ¶ 6, n.18; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8, n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13, n.45.

¹² See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-9800 ¶ 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13.

¹³ See *id.*

test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁴ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁵

5. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁶ The Commission and the Department of Justice (“DOJ”) each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission’s competitive analysis under the public interest standard is somewhat broader.¹⁷ The Commission’s public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.¹⁸ If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.¹⁹

6. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission’s rules.²⁰ We note that no issues were raised with respect to the basic qualifications of Agri-Valley or AT&T, and in addition, AT&T previously and repeatedly has been found qualified to hold Commission licenses.²¹ We therefore find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of Agri-Valley or AT&T.²²

III. POTENTIAL PUBLIC INTEREST HARMS

7. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.²³ In the past, the Commission has used a two-part screen to help identify those markets that provide particular reason for further competitive analysis, but has not limited its consideration of potential competitive harms solely to markets identified by its screen if it encounters other factors that may bear on the public

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43 ¶ 15.

¹⁷ See *id.*

¹⁸ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44 ¶ 16.

¹⁹ 47 U.S.C. § 309(e); see also *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743 ¶ 15; Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

²⁰ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also, e.g., Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign License, WT Docket No. 14-420, *Memorandum Opinion and Order*, 30 FCC Rcd 9899, 9902 ¶ 8 (WTB 2015) (“*USCC-McBride Order*”); *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17.

²¹ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 8; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13 ¶ 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 19.

²² See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

²³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. See also *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

interest inquiry.²⁴ In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its spectrum screen and case-by-case review,²⁵ and in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.²⁶ The Commission stated that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”²⁷ The Commission further stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.²⁸

8. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,²⁹ and the leading nationwide providers hold most of the low-band spectrum available today.³⁰ The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.³¹ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.³² We consider below whether there would be an increased likelihood as a result of the proposed transaction that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying

²⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. See also *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

²⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd 6223-24 ¶ 231.

²⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-88. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd 9800-1 ¶ 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5108 ¶ 2.

²⁷ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. See *id.*, 29 FCC Rcd at 6240 ¶ 287. See also *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses*, WT Docket No. 14-145, *Memorandum Opinion and Order*, FCC 15-150, at ¶ 7, ¶ 15, ¶ 37, ¶ 48, ¶ 51 (rel. Nov. 12, 2015) (“*AT&T-Club 42 Order*”); *USCC-McBride Order*, 30 FCC Rcd at 9903 n.31; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801 n.34; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8 n.31, 5113 ¶ 13, 5114 ¶ 15, 5123 ¶ 36 n.114, 5130 ¶ 56.

²⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

²⁹ See *id.*, 29 FCC Rcd at 6164 ¶ 60.

³⁰ See *id.*, 29 FCC Rcd at 6156-57 ¶ 46, 6164 ¶ 60.

³¹ See *id.*, 29 FCC Rcd at 6164 ¶ 60.

³² See *id.*, 29 FCC Rcd at 6164-65 ¶¶ 60-61; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14 ¶ 14. See also *USCC-McBride Order*, 30 FCC Rcd at 9903 ¶ 10; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 10.

mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.³³

IV. MARKET DEFINITIONS

9. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³⁴ including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

10. *Product and Geographic Market.* Consistent with recent transaction orders we find that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).³⁵ In addition, we find that the relevant geographic market is local – the Applicants are seeking Commission approval of the proposed assignment of 12 to 24 megahertz of spectrum that covers 37 counties in seven CMAs in Michigan accounting for well under one percent of the population of the United States.³⁶

11. *Input Market for Spectrum and Market Participants.* For our analysis, we include the spectrum bands, or portions thereof, found in recent Commission orders as the input market.³⁷ Similarly, we apply recent Commission precedent and consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, WCS, AWS-4, H Block, EBS, and AWS-3 and 600 MHz spectrum (as both the latter become available) to be market participants.³⁸

V. COMPETITIVE EFFECTS OF THE PROPOSED TRANSACTION

12. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, initially, we apply a two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post transaction, we apply enhanced factor review.³⁹ The first part of the screen is based on the

³³ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9903 ¶ 10; *AT&T Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 10; Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association, WT Docket No. 14-199, *Memorandum Opinion and Order*, 30 FCC Rcd 8555, 8559-60 ¶ 10 (WTB 2015) ("*AT&T-KanOkla Order*").

³⁴ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 11; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5114-15 ¶ 16; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22.

³⁵ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

³⁶ The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19. See also *USCC-McBride Order*, 30 FCC Rcd at 9904 n.40; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 n.43; *AT&T-Leap Order*, 29 FCC Rcd at 2748 ¶ 27.

³⁷ See, e.g., *AT&T-Plateau Wireless*, 30 FCC Rcd at 5117 ¶ 22; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169-70 ¶¶ 70, 72. See also *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 13; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 13; *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32.

³⁸ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 13; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35.

³⁹ See e.g., *AT&T-Club 42 Order*, FCC 15-150, at ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240 ¶¶ 46, 286-88. As with our application

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size of the post-transaction Herfindahl-Hirschman Index (“HHI”) and the change in the HHI.⁴⁰ The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁴¹ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.⁴²

13. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. None of the markets trigger the total spectrum screen but in our review of the below-1-GHz spectrum holdings, we find that AT&T would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum post-transaction in six of the seven CMAs involved in the proposed transaction: CMA 181 (Muskegon, MI), CMA 474 (Michigan 3 – Emmet), CMA 475 (Michigan 4 – Cheboygan), CMA 476 (Michigan 5 – Manistee), CMA 477 (Michigan 6 – Roscommon), and CMA 478 (Michigan 7 – Newaygo). We therefore look more closely at the potential competitive effects that the proposed holdings may have.⁴³

14. *Record.* The Applicants argue that the proposed transaction would have no adverse competitive effects, as it would neither cause an overall aggregation of spectrum that would pose an anticompetitive risk nor reduce competition in a meaningful way,⁴⁴ and that no subscriber transition issues are implicated as a result of the proposed transaction.⁴⁵ No petitions to deny or comments were received.

15. *Market-Specific Review.* Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms’ respective networks; the rival firms’ market shares; the combined entity’s post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.⁴⁶

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of the initial total spectrum screen, we evaluate increases in below-1-GHz spectrum concentration on a county-by-county basis. See *USCC-McBride*, 30 FCC Rcd at 9904-5 n. 45; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 n.48; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123 ¶¶ 31, 35.

⁴⁰ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140.

⁴¹ See, e.g., *AT&T-Club 42 Order*, FCC 15-150, at ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-Consolidated Order*, 30 FCC Rcd at 9803 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24.

⁴² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240 ¶¶ 267, 286-88. See also, e.g., *AT&T-Club 42 Order*, FCC 15-150, at ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24.

⁴³ AT&T would also acquire 12 megahertz of low-band spectrum in CMA 94 (Saginaw-Bay City-Midland) to hold 30 megahertz of below-1-GHz spectrum post-transaction. In this CMA, we do not apply enhanced factor review, nor do we find any particular factor that would lead us to undertake further competitive review.

⁴⁴ See Public Interest Statement at 4. See also Response of AT&T to the General Information Request Dated Aug. 12, 2015, WT Docket No. 15-181, at 15 (filed Aug. 26, 2015) (“AT&T Information Request Response”).

⁴⁵ See AT&T Information Request Response at 15.

⁴⁶ We derive market shares and HHIs from our analysis of data compiled in our December 2014 NRUF and LNP database, network coverage from January 2015 Mosaik data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Applications. We also utilized and analyzed additional data as provided by the
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16. We begin our analysis with a review of CMA 181 (Muskegon, MI), which is a non-rural market of approximately 199,000 people with a population density of 194 people per square mile.⁴⁷ Three service providers have a significant market share: AT&T, Sprint, and Verizon Wireless each hold approximately [REDACTED] percent of the market, while T-Mobile has some limited market presence, with a market share of approximately [REDACTED] percent. Post-transaction, AT&T would hold 160 megahertz of spectrum in this CMA, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide providers hold 52 to 129 megahertz of spectrum.⁴⁸ With respect to below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, and T-Mobile holds 12 megahertz. In terms of population and land area coverage, AT&T, Sprint and Verizon Wireless each have significant 3G population and land area coverage, while T-Mobile covers approximately 69 percent of the population with 3G.⁴⁹ In addition, AT&T covers 100 percent of the population and the land area with HSPA+, and approximately 98 percent of the population and 87 percent of the land area with LTE, while the comparable LTE network coverage percentages are approximately 97 and 83 percent for Verizon Wireless, approximately 95 and 75 percent for Sprint, and approximately 69 percent and 19 percent for T-Mobile.

17. We find, notwithstanding the fact that AT&T would hold, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in Muskegon, that the likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.⁵⁰ We note that two other service providers, Sprint and Verizon Wireless, have significant market shares, and T-Mobile has some market presence. The three other nationwide service providers each have access to low-band spectrum that would allow at least a 5×5 megahertz LTE deployment on below-1-GHz spectrum. In addition, the three other nationwide service providers also have access to spectrum above 1 GHz to combine with their low-band spectrum holdings for LTE deployment. We note that Sprint and Verizon Wireless each have significant 3G and LTE population and land area coverage, and in addition, T-Mobile covers close to 70 percent of the population with 3G and with LTE, although its land area coverage is more limited. We find that the acquisition of this spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding in this market, and is unlikely to raise rivals' costs.⁵¹ We find

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Applicants through our information requests. *See, e.g., USCC-McBride Order*, 30 FCC Rcd at 9905 n.51; *AT&T-KanOkla Order*, 30 FCC Rcd at 8562 n.54; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29, n.98.

⁴⁷ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are generally characterized by fewer than 100 people per square mile. *See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, WT Docket Nos. 02-381, 01-14, 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19086-88 ¶¶ 10-12 (2004).

⁴⁸ In addition, DISH holds 56 megahertz of spectrum, including 6 megahertz of low-band spectrum.

⁴⁹ It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. *See, e.g., USCC-McBride Order*, 30 FCC Rcd at 9906 n.54; *AT&T-KanOkla Order*, 30 FCC Rcd at 8562 n.59; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121 n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770 n.279.

AT&T covers 100% of the population and the land area with its 3G network, while the comparable 3G network coverage percentages are approximately 88% and 57% for Sprint, and approximately 98% and 89% for Verizon Wireless. In addition, T-Mobile covers approximately 69% of the population and 23% of the land area with its 3G network.

⁵⁰ *See* ¶ 15 *supra*. *See also, e.g., USCC-McBride Order*, 30 FCC Rcd at 9906-7 ¶¶ 19, 21; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 19; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123 ¶ 36.

⁵¹ We note that Agri-Valley states that it engaged Alpina Capital, LLC ("Alpina") to market its licenses in 2014. Agri-Valley asserts that Alpina contacted a group of potential buyers that it viewed as potentially interested in acquiring the licenses but that only AT&T expressed a substantial interest in acquiring the licenses and was the only entity to make an offer for the 700 MHz licenses. Agri-Valley further states that while T-Mobile expressed initial

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therefore that the proposed transaction is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of AT&T in Muskegon.

18. Turning next to our analysis of the cluster of five rural markets⁵² in which we apply enhanced factor review, we note first that in each of the five markets (Michigan 3 – Emmet, Michigan 4 – Cheboygan, Michigan 5 – Manistee, Michigan 6 – Roscommon, and Michigan 7 – Newaygo), there are three nationwide service providers, AT&T, Sprint, and Verizon Wireless, each with a significant market share.⁵³ Across the five markets, AT&T's total spectrum holdings range from 140 megahertz to 175 megahertz, including 55 megahertz of low-band spectrum in each market. Sprint's total spectrum holdings range from 112 megahertz to 139 megahertz, including 14 megahertz of low-band spectrum in each market. Verizon Wireless's total spectrum holdings range from 67 megahertz to 107 megahertz, including 47 megahertz of low-band spectrum in each market. In addition, T-Mobile's total spectrum holdings range from 32 to 52 megahertz of spectrum, including 12 megahertz of low-band spectrum in each market.⁵⁴ In terms of population and land area coverage, we note that in all five markets, AT&T and Verizon Wireless each have sufficient 3G coverage.⁵⁵ Further, Sprint has sufficient 3G population coverage in Michigan 3 – Emmet, and has sufficient 3G population and land area coverage in Michigan 7 – Newaygo.⁵⁶ Further, AT&T and Verizon Wireless each have substantial LTE population and land area coverage in all five markets.⁵⁷ In addition, Sprint has sufficient LTE population coverage in all these local markets, with the exception of Michigan 4 – Cheboygan.⁵⁸

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interest in Agri-Valley's licenses, by February, 2015, T-Mobile had indicated that its interest was limited to acquiring Agri-Valley's network assets and that it was not interested in acquiring Agri-Valley's 700 MHz licenses. See Agri-Valley Communications, Inc.'s Response to General Information Request Regarding the AT&T/Agri-Valley Communications Transaction, WT Docket No. 15-181, at 2-3 (filed Aug. 26, 2015).

⁵² There are approximately 186,000 people in Michigan 3 – Emmet, and its population density is 78 people per square mile, while there are approximately 137,000 people in Michigan 4 – Cheboygan, and its population density is 28. In Michigan 5 – Manistee, there are approximately 175,000 people and its population density is 44, while in Michigan 6 – Roscommon, there are approximately 145,000 people and its population density is 47 people per square mile. In Michigan 7 – Newaygo, there are approximately 267,000 people and its population density is 83 people per square mile.

⁵³ In Michigan 3 – Emmet, AT&T, Sprint, and Verizon Wireless each hold approximately [REDACTED]%. In Michigan 4 – Cheboygan, their respective market shares are approximately [REDACTED]%. In Michigan 5 – Manistee, their respective market shares are approximately [REDACTED]%. In Michigan 6 – Roscommon, their respective market shares are approximately [REDACTED]%. In Michigan 7 – Newaygo, their respective market shares are approximately [REDACTED]%.

⁵⁴ We note that DISH holds 56 megahertz of spectrum in total in each market, including 6 megahertz of low-band spectrum. Further, Agri-Valley would continue to hold 20 megahertz of spectrum above 1 GHz in Michigan 3 – Emmet and Michigan 7 – Newaygo, and 40 megahertz of spectrum above 1 GHz in Michigan 5 – Manistee. Cellcom holds a maximum of 15 megahertz of spectrum above 1 GHz in Michigan 3 – Emmet, Michigan 4 – Cheboygan, and Michigan 5 – Manistee, and Hilbert Communications holds 20 megahertz of spectrum above 1 GHz in Michigan 4 – Cheboygan.

⁵⁵ In each of the five markets, AT&T covers approximately 99% at least of the population, and approximately 97% at least of the land area, while the comparable coverage percentages for Verizon Wireless are approximately 95% at least of the population, and approximately 79% at least of the land area.

⁵⁶ Sprint covers approximately 76% of the population in Michigan 3 – Emmet, and 37% of the land area. Its coverage percentages are approximately 29% and 6% for Michigan 4 – Cheboygan, approximately 58% and 32% for Michigan 5 – Manistee, approximately 59% and 35% for Michigan 6 – Roscommon, and approximately 81% and 61% for Michigan 7 – Newaygo.

⁵⁷ AT&T covers approximately 94% of the population in Michigan 3 – Emmet, and 76% of the land area with LTE. Its LTE population and land area coverage percentages are approximately 69% and 41% for Michigan 4 –

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19. We find, notwithstanding the fact that AT&T would hold, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in these five local markets, that the likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.⁵⁹ In each of the five markets, in addition to AT&T, Sprint and Verizon Wireless each have a significant market share. The three other nationwide service providers each have access to low-band spectrum that would allow at least a 5×5 megahertz LTE deployment on below-1-GHz spectrum. In addition, the three other nationwide service providers also have access to spectrum above 1 GHz to combine with their low-band spectrum holdings for LTE deployment. We note that Verizon Wireless has significant 3G and LTE population and land area coverage in all five markets, and Sprint has deployed LTE to over 70 percent of the population in all five markets, with the exception of Michigan 4 – Cheboygan, in which it has deployed LTE to approximately 41 percent of the CMA’s population. We find that the acquisition of this spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding in these markets, and is unlikely to raise rivals’ costs. We find therefore that the proposed transaction is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of AT&T in this cluster of five local rural markets.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

20. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁶⁰ The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms,⁶¹ and applies a “sliding scale approach” to evaluating benefit claims.⁶² Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”⁶³ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to

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Cheboygan, approximately 95% and 88% for Michigan 5 – Manistee, approximately 82% and 73% for Michigan 6 – Roscommon, and approximately 95% and 90% for Michigan 7 – Newaygo.

Verizon Wireless covers approximately 99% of the population in Michigan 3 – Emmet, and 90% of the land area with LTE. Its LTE population and land area coverage percentages are approximately 94% and 76% for Michigan 4 – Cheboygan, approximately 97% and 87% for Michigan 5 – Manistee, approximately 96% and 91% for Michigan 6 – Roscommon, and approximately 99% and 97% for Michigan 7 – Newaygo.

⁵⁸ Sprint covers approximately 80% of the population in Michigan 3 – Emmet, and 42% of the land area with LTE. Its LTE population and land area coverage percentages are approximately 41% and 11% for Michigan 4 – Cheboygan, approximately 71% and 47% for Michigan 5 – Manistee, approximately 76% and 55% for Michigan 6 – Roscommon, and approximately 90% and 78% for Michigan 7 – Newaygo.

We note that T-Mobile has begun to deploy an LTE network in Michigan 7 – Newaygo, and covers approximately 33% of the population and 17% of the land area.

⁵⁹ See ¶ 15 *supra*. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9906-7 ¶¶ 19, 21; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 19; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123 ¶ 36.

⁶⁰ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792-93 ¶ 130.

⁶¹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

⁶² See *id.*

⁶³ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44.

approve the proposed transaction.⁶⁴

21. *Potential Benefits.* The Applicants assert, in their detailed demonstration of the claimed benefits, that the proposed transaction would enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services.⁶⁵ In particular, the Applicants contend that the acquisition of this Lower 700 MHz spectrum would allow AT&T to support a 10×10 megahertz LTE deployment.⁶⁶ AT&T asserts that the capacity of a 10×10 megahertz block is greater than the total capacity of two separate 5×5 megahertz blocks,⁶⁷ and contends that the wider bandwidth results in noticeably better performance for users than a deployment using two 5×5 megahertz blocks.⁶⁸ AT&T also asserts that, “for those subscribers whose devices can take advantage of carrier aggregation technologies, they will be able to access a 20×20 MHz carrier-aggregated LTE configuration, as compared to the current 15×15 MHz configuration. This is achieved by using carrier aggregation technology to combine the Lower 700 MHz spectrum with Broadband PCS or AWS-1 spectrum.”⁶⁹

22. *Evaluation.* We have reviewed the Applicants’ asserted benefits, as well as their responses to our requests for additional information and documents regarding the potential benefits of AT&T acquiring, in particular, the below-1-GHz spectrum at issue. The record provides general support for the Applicants’ contentions that the proposed transaction would result in some public interest benefits. Specifically, we anticipate that through the acquisition of this Lower 700 MHz spectrum, AT&T would be able to deploy a more robust LTE network in a relatively short period of time.⁷⁰ As we found in the *AT&T-Plateau Wireless Order* and the *AT&T-Club 42 Order*, customers are likely to benefit in the immediate future from access to improved LTE performance and a more robust network as a result of the instant transaction.⁷¹

VII. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

23. We have reviewed the Applicants’ initial claims, as well as their responses to our requests for additional information and documents. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of AT&T is unlikely to be materially lessened in the areas of Michigan to which we applied enhanced factor review.

⁶⁴ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 20.

⁶⁵ See Public Interest Statement at 3. See also AT&T Information Request Response at 6-9.

⁶⁶ See Public Interest Statement at 3. See also AT&T Information Request Response at 6.

⁶⁷ See AT&T Information Request Response at 7. AT&T asserts that the 10 megahertz block would have approximately 10 percent more capacity than two 5 megahertz blocks. See *id.*

⁶⁸ See AT&T Information Request Response at 7. AT&T cites the 10×10 megahertz LTE deployment’s greater trunking and signaling efficiencies, maintaining that these improvements result in higher system capacity, greater spectral efficiency, and better user throughput than is possible over two separate 5×5 megahertz blocks. See AT&T Information Request Response at 8-9. See also AT&T-Exhibits AVC 000049-ATT-AVC000050.

⁶⁹ See AT&T Information Request Response at 6.

⁷⁰ As for AT&T’s deployment timeline, AT&T states that in markets where it has already deployed LTE on its 700 MHz spectrum, it expects to deploy the Agri-Valley C Block spectrum within 60 to 90 days of closing the transaction. In Michigan 3 – Emmet, where AT&T has no paired 700 MHz spectrum, AT&T indicates that it expects to deploy the Agri-Valley B and C Block spectrum within 12 to 15 months of the close of the transaction. See AT&T Information Request Response at 11.

⁷¹ See *AT&T-Club 42 Order*, FCC 15-150, at ¶¶ 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53. See also, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9805-6 ¶ 22; *AT&T-KanOkla Order*, 30 FCC Rcd at 8564 ¶ 22.

Further, we find that the record provides general support for the Applicants' claims of potential public interest benefits. Therefore, under our sliding scale approach, we find that the likelihood of harm is low and the potential public interest benefits outweigh the harms. As a result, based on the record before us and our competitive review, we find that the proposed assignment would serve the public interest, convenience, and necessity.

VIII. ORDERING CLAUSES

24. ACCORDINGLY, having reviewed the Application and the record in this proceeding, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for assignment of licenses held by Agri-Valley Communications, Inc. to AT&T Mobility Spectrum LLC is GRANTED.

25. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

26. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief
Wireless Telecommunications Bureau